IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL SECOND APPEAL No. 40 of 2005

KAILASH CHANDRA
V/S
LR'S OF RAMNIWAS

2. CIVIL WRIT PETITION NO.3399 OF 2004

KAILASH CHANDRA
V/S
RAM NIWAS AND ORS.

Mr. VK MATHUR & MR.RAVI BHANSALI, for the appellant / petitioner

Mr. SANDEEP SARUPARIA, for the respondent

Date of Order : 2.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

These two matters are closely inter-related, inasmuch as, they relates to same suit for eviction, and at the request of learned counsel for the parties, both these matters are being decided finally at this stage.

Out of these two matters, the writ petition no.3399/2004 is filed against the order of learned lower Appellate Court dismissing the petitioner's application for amendment of written statement, while second appeal no.40/2005 is filed against the decree dismissing the appeal, and decreeing the suit for eviction.

The main contention of learned counsel for the appellant in the writ is, that the plaintiff has other alternative accommodation available with him and, therefore, he has no reasonable and bonafide necessity, and for taking this plea by pointing out the accommodation available with the Landlord, the appellant has filed an application for amendment of written statement, and averments made in that application for amendment, were not controverted by filing any reply. Still that amendment application has been rejected, which order is under challenge in the writ petition.

It is agreed to by learned counsel for the respondent that the order of learned lower Appellate Court dated 22.7.2004, dismissing the application for amendment of written statement, may be set aside and written statement may be allowed to be amended as prayed by the appellant.

In that view of the matter, writ petition no.3399/2004, succeeds. The same is allowed. The order dated 22.7.2004 dismissing the defendant's application for amendment of written statement is set aside, and the application for amendment is allowed. The defendants may file amended written statement in accordance with law before the learned lower Appellate Court.

Consequent upon acceptance of writ petition no. 3399/2004, and grant of permission for amending written statement, the second appeal no. 40/05, involves following substantial question of law:-

(i) Whether the learned lower Appellate Court was in error in rejecting the defendant's application for amendment of written statement?

(ii) If so, whether the impugned Judgment & decree is sustainable?

Since the order rejecting the application for amendment of written statement, has been set aside with the consent of the parties, the first question stands answered in favour of the appellant, and obviously in view of fact that defendant being given permission for amending written statement, impugned decree cannot be sustained, and thus second question also, is required to be answered in favour of the appellant.

Accordingly, second appeal no.40/2005 also succeeds. The same is allowed, and impugned Judgment & decree is set aside. The matter is remanded back to the learned lower Appellate Court to decide the matter afresh in accordance with law after taking the amendment written

statement on record. The learned lower Appellate Court is further directed to decide the matter most expeditiously.

By this order, second appeal and the writ petition, both stand allowed as above.

(N P GUPTA),J.

/Srawat/